

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14122 of Margot Kelly, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the floor area ratio requirements (Paragraph 5301.11) to convert part of the third floor to commercial use in a C-2-A District at premises 707 - 8th Street, S.E., (Square 904, Lots 826 and 827).

HEARING DATE: April 18, 1984

DECISION DATE: April 18, 1984 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located on the west side of 8th Street, S.E. between G Street on the north and I Street on the south. The site is in a C-2-A District and is known as premises 707 - 8th Street, S.E.

2. The subject lot is approximately rectangular in shape. Its dimensions are twenty feet from north to south and 90.04 feet from east to west. A small southward projection exists at the west or rear of the lot. The lot area is 2,034.55 square feet.

3. The subject site is improved with a three-story brick row structure which has a building footprint of 1,474 square feet. The total floor area of the subject building is 3,606.38 square feet.

4. There is access to and from the subject site through 8th Street on the east and through a public alley on the west.

5. The ground floor of the subject structure is currently used as offices by the Veterans Administration Medical Center pursuant to Certificate of Occupancy No. B-82305. The second and third floors are currently vacant. The second floor was last used for commercial purposes by a candlemaker. The third floor was last used as an apartment.

6. The subject premises is located in a C-2-A commercial district which begins at D Street, S.E. and extends along 8th Street southward to its conclusion at the Southwest/Southeast Freeway. The area is characterized by a mix of small scale, low bulk commercial uses including restaurants, clothing stores, one bicycle shop and professional offices. The C-2-A District within which the

subject property is located does not include property located across the street from the subject site which is owned by the Federal Government and contains the U.S. Marine Barracks.

7. The subject structure is of historic design and is located in the Capitol Hill Historic District. The subject structure is part of a row of similar structures along 8th Street that constitutes an historic facade. Virtually all of the buildings on the west side of 8th Street have been converted to commercial use. The Marine Barracks, directly across the street from the subject site has daily band practice and weekly parades. Eight Street has heavy car, bus and pedestrian traffic in addition to the noise and fumes generated by the restaurants in the subject block. All of these factors combine to make the property on 8th Street unattractive and inappropriate for residential use.

8. The applicant has owned the subject property for approximately fifteen years, in addition to owning several other properties in the neighborhood. The area is undergoing a revitalization and the applicant intends to renovate the subject property for use as a rental property. The third floor of the subject structure has been advertised for three years as an apartment but no potential tenants have responded. Other properties which the applicant owns in the subject area have been successfully rented for commercial use. The applicant proposes to convert the entire subject structure to commercial use.

9. The proposed conversion of the entire structure to commercial use would require a variance from the floor area ratio requirements of Paragraph 5301.11 to convert the portion of the third floor that is currently residential into general office space. Paragraph 5301.11 permits, in a C-2-A District, a floor area ratio (FAR) of 1.5 for non-residential uses, an FAR of 2.5 for apartment houses and other residential uses, and a maximum permitted FAR of 2.5. If the entire third floor of the subject structure is converted from residential use to office use, the subject structure will have a non-residential FAR of 1.77 or 554.55 square feet of office space beyond that permitted by the Regulations.

10. The Board of Zoning Adjustment has the power to grant area variances under Paragraph 8207.11 of the D.C. Zoning Regulations where the owner experiences a practical difficulty arising out of some exceptional or extraordinary condition of the property.

11. The subject third floor is not amenable to residential living. Without the requested variance, only about half of the third floor could be devoted to commercial use. The remaining 555 square feet would have to be used

residentially. To divide this space in order to comply with the FAR requirements creates several practical difficulties. Under the Building Code, a second set of stairs and separate entrance for the residential portion would be required. To do so would require the construction of a hallway along the north side of the building on the third floor and would reduce the usable residential space from 555 square feet to approximately 400 square feet. In addition, separate electrical and heating systems would have to be installed for the commercial and residential uses as well as separate bathroom facilities.

12. Since the size of the third floor is only 1,170 square feet, compliance with the Building Code requirements for separate uses reduces the amount of usable floor area to the point where it is practically difficult to continue residential use. Further, even if a 400 square foot efficiency apartment could be parcelled out of the space, there are problems of security and privacy, as well as the fact that the only windows in the apartment would overlook The Broker restaurant roof top, with its air conditioning and food ventilation system.

13. For residential purposes, the building would also fail to meet a number of requirements of the Zoning Regulations, such as lot occupancy and recreational space.

14. Under the differing requirements for egress from office and residential use on the third floor, the more stringent requirement described under Section 620.4 of the Building Code would satisfy both uses. Construction of this new stair would require extensive demolition of the existing interior framing in the building and dislocation of the Veteran's Administration office currently under lease on the first floor.

15. The existing stair will satisfy egress requirements from both residential and office use on the third floor if a second independent means of egress is provided. The existing rear fire escape would satisfy this requirement. However, a new corridor would be required connecting the front occupant, either office or residential, with the rear means of egress. The inside width of the rear half of the building is approximately thirteen feet. Construction of a new egress corridor to the existing fire escape would leave an area less than ten feet wide and over thirty-six feet long for use by the occupant of the rear portion of the third floor. Whether it is used for the office or the residential tenant, the resulting space would be neither practical nor competitive in the Capitol Hill real estate market.

16. As an alternate to use of the existing rear fire escape as a second means of egress, a new fire escape could

be provided on the front of the building with a new corridor providing access for the rear tenant, whether office or residential. This would be satisfactory with regard to the layout of two tenants on the third floor. However, this project is subject to review by the Historic Preservation Review Board, which would not allow this disfiguring of the front of the building which is located in an historic block facing the Marine Barracks on Capitol Hill.

17. The Office of Planning, by report dated April 11, 1984, recommended that the application be approved. The Office of Planning was of the opinion that the 554.55 square foot variance, which is eighteen percent of the total square footage of the subject structure, is minimal. It would only increase the FAR of the subject structure 0.22 above that permitted by regulations. The Office of Planning believed a variance of this minimal magnitude would not be a detriment to the public good. Given the distinct commercial character of surrounding uses, the Office of Planning was of the opinion that the requested relief would not undermine the intent of the Zoning Regulations. The Board concurs with the reasoning and recommendation of the Office of Planning.

18. Advisory Neighborhood Commission 6B, by letter dated March 29, 1984, reported that the ANC supported the application. No issues or concerns were expressed.

19. There was no opposition to the application at the public hearing or of record.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some exceptional or extraordinary condition of the property such as exceptional narrowness, shallowness, shape or topographic conditions. The Board further must determine that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicant has met this burden of proof in showing a practical difficulty inherent in the property. The division of the third floor of the existing structure into two separate areas for residential and commercial uses with the construction of an additional exit at the rear and a hallway would render the remaining space too small and constricted to be usable. Providing a fire escape on the front of the building would also not be a viable alternative because it would mar the historic facade and be contrary to Historic Preservation requirements.

The Board further concludes that permitting the proposed variance from the floor area ratio requirements to allow use of the entire subject structure as general offices will not cause substantial detriment to the public good nor will it substantially impair the intent and purpose of the zone plan. The proposed relief will permit a reasonable use of private property that is not objectionable to the neighborhood. Accordingly, it is therefore hereby ORDERED that the application is GRANTED.

VOTE: 5-0 (Charles R. Norris, Walter B. Lewis, William F. McIntosh, Douglas J. Patton and Carrie L. Thornhill to grant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

JUL 24 1984

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14122order/KATE13